UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERRINGTON TECHNOLOGY LLC,
Plaintiff,

-v-

CENTURY LINK, INC.,
Defendant.

19-CV-6828 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On January 8, 2020, the Court dismissed this action for failure to prosecute. (Dkt. No. 27.) Plaintiff Herrington Technology LLC has moved to reopen the case and has requested an extension until March 15, 2020, to obtain new representation.

Pursuant to the Federal Rules of Civil Procedure, the Court is permitted to relieve a party from such a dismissal for, among other things, "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P 60(b)(1). Under this standard, "courts in this circuit draw a line between excusable and inexcusable neglect based in part on the ability of the plaintiff or her counsel to control the circumstances that led to the breakdown." *Green ex rel. Estate of Green v. Advanced Cardiovascular Imaging*, No. 07-CV-3141, 2009 WL 3154317, at *3 (S.D.N.Y. Sept. 30, 2009). Ultimately, the issue "is addressed to the sound discretion of the trial court." *Velez v. Vassallo*, 203 F. Supp. 2d 312, 333 (S.D.N.Y. 2002).

Here, Herrington has filed two letters that provide an abbreviated account of the misunderstanding that led to the dismissal. One letter states only that there was a "communication oversight." (Dkt. No. 29.) Another letter explains that Herrington believed an e-mail sent to the address "courtnotices@kasowitz.com" sufficed to constitute an "electronic communication via email to the court." (Dkt. No. 28.) On these facts, the Court cannot find that

Herrington has established "excusable" neglect. Accordingly, the motion to reopen the case is denied without prejudice.

Plaintiff is directed to have a law firm enter an appearance in this action by March 15, 2020, and to file a motion to reopen the case that addresses the requisite showing under Rule 60(b).

SO ORDERED.

Dated: February 14, 2020
New York, New York

J. PAUL OETKEN
United States District Judge